

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

CENTRAL VALLEY REGIONAL CENTER

DDS No. CS0004409

OAH Case No. 2023050266

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, conducted a fair hearing on June 21, 2023, by videoconference and telephone from Sacramento, California.

Jacqueline Molinet, State Hearing Representative, represented Central Valley Regional Center (CVRC).

Claimant's father (Father) represented Claimant, who was not present.

Evidence was received, the record closed, and the matter submitted for decision on June 21, 2023.

ISSUE

Did CVRC appropriately deny reallocation of funds in Claimant's Self-Determination Program (SDP) spending plan to fund a one-on-one respite service for an Autism on the Seas Royal Caribbean International Cruise to Alaska?

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a 14-year-old individual receiving Lanterman Act services coordinated through CVRC. He qualifies for such services by virtue of his conditions of intellectual disability and seizure disorder. He currently receives services through the SDP.

2. On May 1, 2023, CVRC issued a Notice of Action (NOA) denying reallocation of funds in Claimant's SDP spending plan to fund a one-on-one respite service for an Autism on the Seas Royal Caribbean International Cruise to Alaska. CVRC reasoned that any respite service provider within the SDP must have a background check completed, be Home and Community-Based Services (HCBS) compliant, and must provide the service within the State of California. CVRC consulted with the Department of Developmental Services (DDS), which declined to authorize an exemption to the within-California requirement.

3. Thereafter, Father, on behalf of Claimant, timely filed a fair hearing request to appeal CVRC's decision. Consequently, the matter was set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

CVRC's Evidence

4. Claimant requires 24-hour care and supervision due to his developmental disability. Claimant's parents booked a Royal Caribbean International Cruise to Alaska for July 2023. Autism on the Seas provides respite services during the cruise for a cost of \$655. Autism on the Seas is based in Connecticut and has international employees.

5. Father requested that funds from Claimant's SDP spending plan be used to pay for the respite services on the cruise. There are funds available in Claimant's budget and spending plan to fund such services. For regional centers to provide funding through the SDP, the service provider must be vendored by a Financial Management Service (FMS). Claimant's FMS is Aveanna. Thus, CVRC provided Aveanna with Claimant's request.

6. Aveanna responded that it would not be able to vendor Autism on the Seas without DDS approval because it would be providing the respite services outside of California. Additionally, Aveanna expressed concerns about employee background checks given that employees can be from any country.

7. On April 18, 2023, CVRC consulted with Suzy Requarth, Acting Manager, Self Determination Program and HCBS Regulations at DDS. Ms. Requarth indicated that an FMS would be unable to vendor an out-of-state service such as Autism on the Seas and expressed concerns regarding employee criminal background checks.

8. CVRC also considered a reimbursement to Claimant's parents, but reimbursement for services is prohibited through the SDP and FMS. Thus, it concluded that there was no mechanism to fund the requested services, either through the SDP or traditional services, because it is an out-of-state service. Consequently, it is issued the above-mentioned NOA.

9. At hearing, CVRC did not present evidence regarding the issue of HCBS compliance or employee background checks for Autism on the Seas. Instead, it argued that even if such issues could be remedied, denial of the out-of-state service was appropriate.

Claimant's Evidence

10. Father testified at hearing. He indicated that CVRC has known about the cruise and respite services offered by Autism on the Seas since they were first discussed on November 1, 2022. It was not until April 6, 2023, that CVRC stated in a meeting that they did not realize the cruise was out of state and that they did not think they could approve out-of-state services. CVRC then consulted with DDS but did not allow Father to participate in that consultation. Father is intimately familiar with the services provided by Autism on the Seas and would have been able to provide DDS with better information. Instead, CVRC merely notified Father on April 18, 2023, that the cruise respite services would be denied as an out-of-state service. The subsequent NOA then also added as additional reasons for denial the issues of employee background checks and HCBS compliance.

11. Father believes CVRC has not acted in good faith. First, employee background checks are not required because the vendor's staff member providing one-on-one respite will never be alone with Claimant and will not be providing any direct services such as feeding, bathing, changing diapers, or giving medication. Second, at the time CVRC issued the NOA, it was still processing the vendor's HCBS assessment. CVRC also later notified Father that HCBS compliance for Autism on the Seas was not required. Third, CVRC did not submit a proper plan for the out-of-state service to DDS and failed to allow Father to participate in the consultation with DDS.

12. Recreation and being out in the community are high needs for Claimant and is identified in his Person Centered Plan. The cruise serves those needs. There are no generic resources that can provide the respite services on the cruise ship. Moreover, the requested services are very cost effective at \$655 for the entire week.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700–4716.)

2. The Lanterman Act sets forth the regional center’s responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to “approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) An “array of services and supports should be established. . . to meet the needs and choices of each person with developmental disabilities. . . to support their integration into the mainstream life of the community. . . [and to] prevent dislocation of persons with developmental disabilities from their home communities.” (*Ibid.*) Additionally, “[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.” (*Ibid.*)

3. Here, Claimant asserts that he should be entitled to reallocate funds from his SDP spending plan to pay for respite services on a cruise to Alaska and that CVRC’s denial constitutes a violation of the Lanterman Act. Claimant bears the burden of proving such a violation by a preponderance of the evidence. (See Evid. Code, §§ 500

["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. Welfare and Institutions Code section 4519, subdivision (a), provides as follows:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The

department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months. For the purposes of this section, the department shall be considered a service agency under Chapter 7 (commencing with Section 4700).

5. Here, the record shows that CVRC consulted with DDS regarding the ability to fund the out-of-state respite services for the cruise. DDS advised that this would not be possible. Although a formal request was never submitted to the Director of DDS or their designee, such a request would have been futile under the circumstances here. Welfare and Institutions Code section 4519, subdivision (a), provides that the proposed service or an appropriate alternative must not be available from resources and facilities in California. A cruise is not necessary to facilitate Claimant's recreation and being out in the community, and in-state respite services are readily available. Thus, CVRC reasonably did not submit a formal request after consulting with DDS.

6. To be sure, Claimant's dissatisfaction with CVRC's delay in raising the issue with the requested out-of-state respite services is understandable. However, such dissatisfaction cannot overcome the statutory mandate. Because the requested

services must be denied based on their taking place out of state, it is unnecessary to consider the alternative grounds for denial raised in the NOA.

ORDER

Claimant's appeal of the denial of his request to reallocate funds in Claimant's Self-Determination Program spending plan to fund a one-on-one respite service for an Autism on the Seas Royal Caribbean International Cruise to Alaska is DENIED.

DATE: June 27, 2023

WIM VAN ROOYEN
Administrative Law Judge
Office of Administrative Hearings



NANCY BARGMANN
DIRECTOR

State of California—Health and Human Services Agency
Department of Developmental Services
1215 O Street, Sacramento, CA 95814
www.dds.ca.gov



GAVIN NEWSOM
GOVERNOR

July 18, 2023

Name and Address removed for privacy

On May 2, 2023, the Department of Developmental Services (Department) received your appeal submitted on behalf of [REDACTED]. The Office of Administrative Hearings (OAH) issued a proposed hearing decision, OAH case number 2023050266, regarding your appeal on June 27, 2023.

Welfare & Institutions Code section 4712.5, subdivision (e), gives the Department the authority to review proposed hearing decisions. **The Department has reviewed the proposed decision and adopts that decision as final.** A copy of the proposed decision is enclosed with this letter.

You may seek reconsideration of the final decision only for errors of fact or law, or for clerical errors, or regarding the decision of the hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code Section 4712, subdivision (g). The Reconsideration process is described in the Department's information packet at: <https://www.dds.ca.gov/general/appeals-complaints-comments/fair-hearings-complaint-process/lanterman-act-appeals-information-packet/>. The Form DS 1824 must be used to request reconsideration. It is within the "Appeal Forms" section of the Lanterman Act eligibility and services appeal process website: <https://www.dds.ca.gov/general/appeals-complaints-comments/fair-hearings-complaint-process/>.

A regional center also may request reconsideration of this final decision. As described in the information packet, if you or the regional center requests reconsideration, you or the regional center must inform the other party to the decision. The other party may file comments supporting or opposing the request. You may also appeal this final decision through the court system within 180 days.

A regional center is required to implement a final hearing decision within 30 days of the date of this letter. If it cannot, it must notify you and the Department in writing of the exceptional circumstance that makes it impossible to implement within that timeframe, and the date it expects to be able to implement the decision. More information about

July 18, 2023
Page two

this can be found in the “Delayed Implementation of Hearing Decisions Requirements” section of the Department’s website: <https://www.dds.ca.gov/general/appeals-complaints-comments/fair-hearings-complaint-process/>.

If you need help understanding this decision, the people who may help you are:

- Your service coordinator or other regional center staff, if you ask them.
- Your clients’ rights advocate at:
 - (800) 390-7032 for Northern California, or
 - (866) 833-6712 for Southern California, or
 - [Find the clients’ rights advocate at your regional center here.](#)
- The Ombudsperson Offices at (877) 658-9731 or ombudsperson@dds.ca.gov,
- The State Council on Developmental Disabilities (SCDD).
 - To find your local SCDD office, select “Regional Offices” at the top of this webpage: www.scdd.ca.gov, and then choose your area.
 - You also can reach them at (833) 818-9886.
- Disability Rights California (DRC) at:
 - 1-800-776-5746
 - 1-800-719-5798 for TTY call
 - They are available Monday, Tuesday, Thursday, and Friday from 9:00AM – 3:00PM
 - You also may complete [DRC’s online intake form](#).
- You also may get help from a Family Resource Center: <https://frcnca.org/get-connected/>.
- Your regional center may help you find a local parent support group or community-based organization that can help you.

Sincerely,

Original signed by:

NANCY BARGMANN
Director

Enclosure

cc: See next page

July 18, 2023
Page three

cc: Amy McMahon, Central Valley Regional Center
Jaqueline Molinet, Central Valley Regional Center
Matthew Bahr, Central Valley Regional Center
Susan Formaker, Office of Administrative Hearings
Tom Blythe, Department of Developmental Services
Sean Rashkis, Department of Developmental Services